

WC 10-101

## PUBLIC UTILITY COMMISSIONER OF OREGON

LABOR & INDUSTRIES BUILDING, SALEM OREGON 97310 PHONE (503)

August 9, 1985

DOCKET FILE COPY ORIGINAL

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission  
Attention: Margaret Wood, Esq.  
Room 6206  
1919 M Street, N.W.  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

Attached please find a copy of our letter to you dated May 21, 1985, in response to Mr. Wilchin's request.

William C. DuValle  
Assistant Commissioner  
Proceedings Division

WCD/nm

Attachment



## *PUBLIC UTILITY COMMISSIONER OF OREGON*

LABOR & INDUSTRIES BUILDING, SALEM OREGON 97310 PHONE (503) 378-6683

May 21, 1985

Federal Communications Commission  
Attention: Margaret Wood, Esq.  
Room 6206  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Pole attachment certification

This letter responds to the letter from Howard S. Wilchins dated May 3, 1985.

Our administrative rule on pole attachments is codified in Oregon Administrative Rules 860-22-055 as one of many rules relating to the regulation of utility companies. All substantive administrative rules administered by the Public Utility Commissioner are governed by procedural rules found in Oregon Administrative Rules 860-11-000 through 860-14-096. Those procedural rules are published, made available to the public, and include provisions for conducting contested case proceedings. Therefore the methodology for regulating pole attachment disputes is provided for in Oregon Administrative Rules 860-11-000 through 860-14-096.

I trust this information satisfies your requirements for our regulation of pole attachments.

William C. DuValle  
Assistant Commissioner  
Proceedings Division

lb/1119B

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

May 3, 1985

IN REPLY REFER TO:

Oregon Public Utility Commission  
300 Labor and Industries Building  
Salem, Oregon 97310  
Attn: William C. DuValle, Assistant Commissioner

Gentlemen:

The Commission is again updating its list of states which have certified that they regulate pole attachment rates, terms, and conditions to insure that all certifications comply with amended Section 1.1414 of the Commission's Rules, 47 C.F.R. §1.1414. That Section was recently amended to implement certain provisions of the Cable Communications Policy Act of 1984. Report and Order in MM Docket No. 84-1296, FCC 85-179 (released April 19, 1985). Among the amendments is new Section 1.1414(a)(3), 47 C.F.R. §1.1414(a)(3), which provides that a state regulating pole attachments must certify to this Commission that

It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state) . . . .

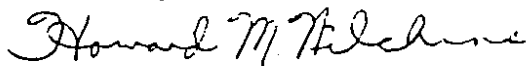
With the exception of a statement about methodology, your certification already includes all of the required information. Accordingly, if your state's rules and regulations include a specific methodology which has been made publicly available in the state, please so certify to the Commission by May 30, 1985.

Receipt of such information by May 30, 1985, will permit the Commission to retain your state on our certification list. Therefore, your prompt attention and cooperation are appreciated.

Please address your certification and any inquiries to:

Federal Communications Commission  
Attention: Margaret Wood, Esq.  
Room 6206  
1919 M Street, N.W.  
Washington, D.C. 20554  
Telephone (202) 632-4890

Sincerely,



Howard M. Wilchins  
Deputy Chief, Enforcement Division

Enclosure

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations was amended to read as follows:

A. Part 1 - Practice and Procedure.

1. Section 1.1414 is amended by revising paragraphs (a)(1) and (a)(2) and adding new paragraphs (a)(3) and (e) to read as follows:

§1.1414 State certification.

- (a) If the Commission does not receive certification from a state that:
- (1) It regulates rates, terms and conditions for pole attachments;
  - (2) In so regulating such rates, terms and conditions, the state has the authority to consider and does consider the interests of the subscribers of cable television services as well as the interests of the consumers of the utility services; and,
  - (3) It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state), it will be rebuttably presumed that the state is not regulating pole attachments.

\* \* \* \* \*

- (e) Notwithstanding any such certification, jurisdiction will revert to this Commission with respect to any individual matter, unless the state takes final action on a complaint regarding such matter:
- (1) within 180 days after the complaint is filed with the state, or
  - (2) within the applicable periods prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

Stanley E. Davis  
President  
Robert H. Edgar  
First Vice President  
William D. Griffith  
Second Vice President  
Robert A. Ringman  
Executive Vice President  
Robert L. Doyle  
Secretary



CALIFORNIA INDEPENDENT TELEPHONE ASSOCIATION

210 VERNON BOX 368  
ROSEVILLE, CALIFORNIA 95678  
916 - 782-8424

RECEIVED

OCT 24 1979

POLE ATTACHMENT  
BRANCH

DIRECTORS  
Stanley E. Davis  
Robert L. Doyle  
Robert H. Edgar  
Ralph Hooper  
Charles A. Nutter  
William D. Griffith  
Delwyn C. Williams

*Official ltr rec'd from  
Ore. File this with  
Ore material now*

RECEIVED BY FCC  
MAIL BRANCH ON  
OCT 22 1979

October 17, 1979

William J. Tricarico  
Federal Communications Commission  
1919 "M" Street, N.W.  
Washington, DC 20554

ATTN: Chief Common Carrier Bureau

RE: CATV Pole Attachment Regulation

Gentlemen:

I have read announcements originating from your office stating that eighteen states have certified they regulate terms, rates, and conditions for pole attachments, thus preempting Commission rules on cable TV pole attachments. Oregon was not included in the list.

I am enclosing a copy of Oregon legislation, SB 560, that was signed by the Governor on July 15, 1979, providing for state regulation of CATV pole attachments.

Sincerely,

  
Robert A. Ringman  
Executive Vice President

RAR/cb

enclosure

cc: Frank Dillow, Asst. Commissioner, OPUC  
Frank Figg, GTE  
Jorrene Erickson, OITA

## OREGON LEGISLATIVE ASSEMBLY--1979 Regular Session

## Enrolled

## Senate Bill 560

Sponsored by Senator KULONGOSKI (at the request of Pacific Northwest Bell)

CHAPTER.....356.....

## AN ACT

Relating to utilities; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

**SECTION 1.** Sections 2 to 9 of this Act are added to and made a part of ORS chapter 757.**SECTION 2.** As used in this 1979 Act, unless the context requires otherwise:

(1) "Attachment" means any wire or cable for the transmission of intelligence by telegraph, telephone or television (including cable television), light waves, or other phenomena, or for the transmission of electricity for light, heat or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telegraph, telephone, electrical, cable television or communications right-of-way, duct, conduit, manhole or handhole or other similar facility or facilities owned or controlled, in whole or in part, by one or more public utility or people's utility district.

(2) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association which is authorized to construct attachments upon, along, under or across the public ways.

(3) "Public utility" means any electrical company, telephone company or telegraph company, as defined in ORS 757.005, and does not include any entity cooperatively organized or owned by federal, state or local government, or a subdivision of state or local government.

(4) "People's utility district" means any concern providing electricity organized pursuant to ORS 261.010 and includes any entity cooperatively organized or owned by federal, state or local government or a subdivision of state or local government.

**SECTION 3.** The Public Utility Commissioner of Oregon shall have the authority to regulate in the public interest the rates, terms and conditions for attachments by licensees to poles or other facilities of public utilities. All rates, terms and conditions made, demanded or received by any public utility for any attachment by a licensee shall be just, fair and reasonable.

**SECTION 4.** The Director of the Department of Commerce shall have the authority to regulate the rates, terms and conditions for attachments by licensees to poles or other facilities of people's utility districts. All rates, terms and conditions made, demanded or received by any people's utility district for any attachment by a licensee shall be just, fair and reasonable.

**SECTION 5.** Whenever the Public Utility Commissioner of Oregon or the Director of the Department of Commerce finds, after hearing had upon complaint by a licensee, a public utility or a people's utility district that the rates, terms or conditions demanded, exacted, charged or collected in connection with attachments or availability of surplus space for such attachments are unjust or

unreasonable, or that such rates or charges are insufficient to yield a reasonable compensation for the attachment and the costs of administering the same, the commissioner or director shall determine the just and reasonable rates, terms and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing such rates, terms and conditions, the commissioner or director shall consider the interest of the customers of the licensee, as well as the interest of the customers of the public utility or people's utility district which owns the facility upon which the attachment is made.

**SECTION 6.** A just and reasonable rate shall assure the public utility or the people's utility district the recovery from the licensee of not less than all the additional costs of providing and maintaining pole attachment space for the licensee nor more than the actual capital and operating expenses, including just compensation, of the public utility or people's utility district attributable to that portion of the pole, duct or conduit used for the pole attachment, including a share of the required support and clearance space in proportion to the space used for pole attachment above minimum attachment grade level, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities.

**SECTION 7.** Agreements regarding rates, terms and conditions of attachments shall be deemed to be just, fair and reasonable, unless the commissioner or director finds upon complaint by a public utility, people's utility district or licensee party to such agreement and after hearing, that such rates, terms and conditions are adverse to the public interest and fail to comply with the provisions hereof.

**SECTION 8.** Nothing in this 1979 Act shall be deemed to apply to any attachment by one or more electrical utilities on the facilities of one or more other electrical utilities.

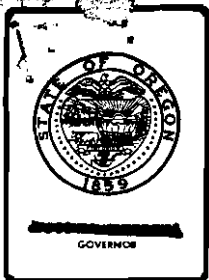
**SECTION 9.** The procedures of the commissioner or director for petition, regulation and enforcement relative to attachments, including any rights of appeal from any decision thereof, shall be the same as those applicable to the commissioner and director respectively.

**SECTION 10.** This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect upon its passage.

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Approved by the Governor July 15, 1979.

Filed in the office of Secretary of State July 16, 1979.



**PUBLIC UTILITY COMMISSIONER OF OREGON**

LABOR & INDUSTRIES BUILDING, SALEM OREGON 97310 PHONE (503)

**RECEIVED**  
OCT 12 1979

**POLE ATTACHMENT  
BRANCH**

September 25, 1979

**RECEIVED**

1979

Cable Television Bureau  
Federal Communications Commission  
1919 M Street N.W.  
Washington, D.C. 20554

**CABLE TV BUREAU  
OFFICE OF CHIEF**

ATTN: Willard R. Nichols, Chief

Re: State of Oregon certification of jurisdiction over cable  
television pole attachments

Gentlemen:

I hereby certify under 47 C.F.R. § 1.1414, that by virtue of 1979 Oregon Laws, Chapter 356, a true copy of which is attached, the State of Oregon, through its Public Utility Commissioner, has jurisdiction to regulate rates, terms and conditions for pole attachments.

In so regulating such rates, terms and conditions, the State of Oregon has authority to consider and does consider the interest of the subscribers of cable television services, as well as the interest of consumers of utility services.

Very truly yours,

John J. Loddell  
Public Utility Commissioner  
of Oregon

dp

Enclosure

**RECEIVED**

1979

**CABLE TV BUREAU  
OFFICE OF CHIEF**  
OCT 12 12 22 PM '79

**RECEIVED**



OREGON LEGISLATIVE ASSEMBLY—1979 Regular Session

Enrolled

**Senate Bill 560**

Sponsored by Senator KULONGOSKI (at the request of Pacific Northwest Bell)

CHAPTER.....356.....

**AN ACT**

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**SECTION 4.** The Director of the Department of Commerce shall have the authority to regulate the rates, terms and conditions for attachments by licensees to poles or other facilities of people's utility districts. All rates, terms and conditions made, demanded or received by any people's utility district for any attachment by a licensee shall be just, fair and reasonable.

**SECTION 5.** Whenever the Public Utility Commissioner of Oregon or the Director of the Department of Commerce finds, after hearing had upon complaint by a licensee, a public utility or a people's utility district that the rates, terms or conditions demanded, exacted, charged or collected in connection with attachments or availability of surplus space for such attachments are unjust or

unreasonable, or that such rates or charges are insufficient to yield a reasonable compensation for the attachment and the costs of administering the same, the commissioner or director shall determine the just and reasonable rates, terms and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing such rates, terms and conditions, the commissioner or director shall consider the interest of the customers of the licensee, as well as the interest of the customers of the public utility or people's utility district which owns the facility upon which the attachment is made.

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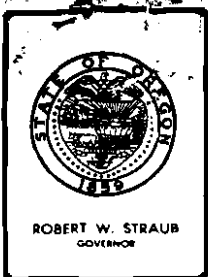
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**SECTION 10.** This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect upon its passage.

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Approved by the Governor July 15, 1979.

Filed in the office of Secretary of State July 16, 1979.



*Not accepted  
ab initio JT 1/23/79*

## **PUBLIC UTILITY COMMISSIONER OF OREGON**

LABOR & INDUSTRIES BUILDING, SALEM OREGON 97310 PHONE (503) 378-6601

January 15, 1979

Mr. James Talens, Chairman  
Federal Communications Commission  
1919 M. Street NW - Room 522  
Washington, D. C. 20554

On April 7, 1978, I wrote the commission in response to federal legislation giving the FCC authority to regulate rates, terms and conditions of pole attachments for cable T.V. systems. In that letter, a copy of which is attached, I asserted that the State of Oregon had the authority to regulate CATV pole attachments.

I would like hereby to withdraw that letter.

We are currently undertaking a review of the Oregon law with respect to cable television systems. In addition, I know that the 1979 Oregon Legislature will be addressing the question of regulation of cable television. In view of these events, it is inappropriate for the Oregon PUC to assert jurisdiction at this time.

I anticipate that the issue of CATV regulation in Oregon will be resolved one way or another by July 1, 1979.

Leroy H. Hemmingway  
Deputy Commissioner  
Director, Utility Program

cd-0425D

Attachment

6371

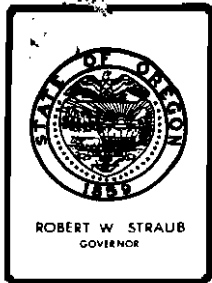
April 7, 1978

The Honorable Charles D. Ferris  
Chairman  
Federal Communications Commission  
1919 "M" Street NW  
Washington, D.C. 20554

We understand that legislation has passed providing that the Federal Communications Commission shall regulate the rates, terms and conditions of pole attachments for cable TV systems except when such matters are state regulated. Please be advised that ORS 758.020 and 758.035 give the Public Utility Commissioner of Oregon the power to regulate compensation for the joint use of poles by any public utility wherever "public convenience or necessity requires such use and such use will not result in irreparable injury to the owner or other owners of such equipment nor in any substantial detriment to the service to be rendered by such owners or other users." The statute further provides that if the parties cannot agree upon such use or the conditions or compensation, the Commissioner shall permit and prescribe "reasonable conditions and compensation for such joint use." We therefore believe Oregon law provides for the protection and regulation of rates charged to cable television users.

Leroy H. Hemmingway  
Deputy Commissioner  
Director, Utility Program

kls/N2732



ROBERT W. STRAUB  
GOVERNOR

*Evan White*  
*8/24/78*

*Gross*

## Public Utility Commissioner of Oregon

LABOR & INDUSTRIES BUILDING, SALEM 97310 PHONE (503) 378- 6371

April 7, 1978

The Honorable Charles D. Ferris  
Chairman  
Federal Communications Commission  
1919 "M" Street NW  
Washington, D.C. 20554

COMMON CARRIER BUREAU  
APR 13 1978  
TARIFFS AND SERVICES  
DIVISION

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*Leroy H. Hemmingway*

Leroy H. Hemmingway  
Deputy Commissioner  
Director, Utility Program

RECEIVED

APR 28 1978

TARIFFS BRANCH

RECEIVED

APR 25 1978

CHIEF, COMMON CARRIER BUREAU

APR 20 1978